UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

HUDALJ Nos. 05-98-1000-8
05-98-1476-8

Decided: November 16, 2000

Elizabeth Crowder, Esq.
For the Charging Party

Kathleen K. Clark, Esq.
Miriam N. Geraghty, Esq.
For the Intervenors

Bruce L. Cook, Esq.
Inhak Lee, Esq.
For the Respondents

Before: William C. Cregar
Administrative Law Judge

INITIAL DETERMINATION AND ORDER

Introduction

This case arises under the Fair Housing Act, 42 U.S.C. §§ 3601-3619. After an investigation, the Department of Housing and Urban Development issued a Finding of Reasonable Cause and a Charge of Discrimination on January 20, 2000. Respondents filed their Answer on February 21, 2000. On February 29, 2000, I granted the Request of Ronald and Darlene Wooton to Intervene as parties. After a delay necessitated by Respondents having obtained new counsel, a hearing was held on June 20-21, 2000, in Chicago, Illinois. Proposed Findings of Fact and Post Hearing Briefs were filed timely on August 21, 2000. Reply Briefs were filed timely on September 15, 2000. I conclude that a preponderance of evidence establishes that Respondents unlawfully discriminated against the Intervenors in violation of 42 U.S.C. §§ 3604 (a) and (d). Accordingly, I award damages and other affirmative relief to both the Intervenors and Complainant South Suburban Housing Center. In addition, I order Respondents to pay civil penalties to the United States.

Statement of Facts

1. Respondents, Cecil and Patricia Timmons, are a white couple who have been married for 50 years. They have two adult daughters, Debra, 47, and Lynette Mathews, nÙe Timmons, 40. Respondents jointly own five single family houses in Palos Hills, Illinois. They rent four of the houses and live in the fifth. None of the houses is mortgaged. Tr. pp. 252-55; 263, 354.1

2. Intervenors, Ronald and Darlene Wooton, are a white married couple with two children: Teigan, three, and, Joshua, eight. Teigan and Joshua were, respectively, one and six at the time of the events which are the subject of this proceeding. The Wootons have been married for three years. Ms. Wooton adopted Joshua on April 22, 1992, during a prior marriage. Mr. Wooton is presently attempting to adopt him. Joshua is African-American. J.E. 7; Tr. pp. 58-59, 91, 137-38.

3. Complainant South Suburban Housing Center (SSHC) is an organization engaged in the promotion of diverse communities and the enforcement of anti-discrimination laws relating to housing. Palos Hills, Illinois, is located within its primary service area. Tr. pp. 292-94.

4. From 1992 until May 1998, one of Respondents' properties located at 10535 South 81st Street, Palos Hills, Illinois ("the property"), was rented to Dawn Cook, a

single parent. The house is next door to Respondents' residence at 10537 South 81st Street. Ms. Cook acquired the lease as a result of her father's friendship with Mr. Timmons. Tr. pp. 22, 253.

5. Dawn Cook and Darlene Wooton had been good friends since the early 1990s, seeing each other once or twice a week. Ms. Wooton had visited Ms. Cook's house many times, and she and her husband wanted to move out of their small apartment. The house was larger than their apartment, had a yard, and would better suit their needs. In April 1998, Ms. Cook, knowing of the Wootons' interest in her house, told Darlene Wooton that she was planning to move and that she would let her know once she informed Mr. Timmons. On April 16, 1998, she notified Mr. Timmons that she was going to leave. Tr. pp. 26-27, 63, 141-42.

6. In the early evening of April 16th, the Wootons left their children in the care of Ms. Cook while they went next door to tell the Timmons that they were interested in renting the house. Mr. Timmons answered the door and spoke with them on his porch at the front door entry for approximately 20-30 minutes. He gave the Wootons a fairly detailed description of the rental terms and the condition of the house. Specifically, he told them2 that the rent was $700 per month; that the he and his wife would require a security deposit in the amount of one and one half month's rent; that the house had a clothes dryer but did not have a washing machine; and that the house would be available as soon as Ms. Cook moved out. At some point he mentioned that his daughter's friend was also interested in the home. At the conclusion of the conversation, Mr. Timmons exchanged phone numbers with the Wootons and said that he would let them know of his decision after he spoke with Ms. Timmons. J.E. 4, ¶ 5, J.E. 8; Tr. pp. 28, 55, 64-66, 142-44.

7. Shortly after returning home, Mr. Wooton received a telephone call from Mr. Timmons who told him that he would rent the house to them if they wanted it. He also said that he had instructed his daughter (Lynette Mathews), who had not yet spoken to her friend about the house, not to talk to her. Mr. Wooton told Mr. Timmons that he would speak to his wife after she returned from the grocery store to obtain his wife's consent to the rental. J.E. 8; Tr. pp. 66-67.

8. Upon her return from the store, Ms. Wooton called Respondents. When Ms. Timmons answered, Ms. Wooton asked to speak to Mr. Timmons. Once Mr. Timmons was on the line, she told him that they wanted the house. They discussed the coordination of their move with Ms. Cook's moving out, the rental terms, and the need for a washing machine. They also discussed the need to replace or clean the carpets, and to obtain a form lease. Mr. Timmons told Ms. Wooton that he did not know where to obtain a lease form. Ms. Wooton suggested an office supply store. Ms. Wooton offered to bring the security deposit over that evening (April 16th), but Mr. Timmons said that that would not

be necessary. They agreed to meet at Respondents' residence on Sunday, April 19, 1998, at 4:00 p.m. to sign the lease. Mr. Timmons said he would reschedule the appointment if his wife was not going to be home. J.E. 8; Tr. pp. 146-48, 382, 439.

9. Prior to the April 19th meeting, Mr. Timmons asked Ms. Cook whether she and the Wootons were friends and whether they paid their bills on time. Mr. Timmons told Ms. Cook that the Wootons seemed like nice people and that he was probably going to rent to them. He told Ms. Cook that she and Ms. Wooton could work out moving dates since they were friends. He obtained a lease form at an office supply store. Tr. pp. 29-31, 49, 439.

10. On the morning of April 19, 1998, the Wootons drove to Lake Geneva, Wisconsin, to purchase a washing machine through Ms. Wooton's brother, Daryl Cesario. Ms. Wooton wrote a check in the amount of $300 to her brother. Between the 16th and 19th of April, the Wootons began packing in anticipation of the move. J.E. 1; Tr. pp. 150, 157, 160.

11. On April 19th at about 3:45 p.m., the Wootons arrived at the Cook residence. Because Ms. Cook was not home to watch the Wooton children, Ms. Wooton carried Teigan, and Joshua followed as they walked next door and knocked on the Timmons' door. Mr. Timmons opened the door and exchanged friendly greetings. As they started to walk in, Mr. Timmons observed Joshua for the first time. He stared at Joshua, his mouth wide open. Ms. Wooton said the following (or words substantially similar): "This is my son Joshua. He is black. Is that a problem?" Mr. Timmons replied that it was not. Mr. Timmons then said that he hadn't had a chance to obtain a lease form; then he contradicted himself, stating that although he had obtained a lease form, he had not yet filled it out. Saying that he had to get his wife, he went upstairs for approximately 10-15 minutes. Upon his return, Mr. Timmons told the Wootons that his wife had already rented the house to his daughter's friend, without his knowledge, and that he would not be able to rent to them. Apologizing several times, he said that the commitment with his daughter's girlfriend was firm. He told Ms. Wooton that he would call her back in a week to reconfirm that the property was unavailable.3 J.E. 8; Tr. pp. 70-71, 158-59, 390, 423.

12. When Ms. Cook returned home she found the Wootons waiting for her. Ms. Wooton was crying. Ms. Cook had never seen Ms. Wooton "crying like that." Tr. pp. 33-35.

13. Ms. Wooton called Mr. Timmons about one week later because he had not called her to reconfirm that he had rented the house. She asked him if he and his daughter's friend had signed the lease. He said he hadn't, but he would take care of it. Tr. p. 164.

14. Tina and John Becker rented Respondents' house following the rejection of the Wootons. Tina Becker is Lynette Mathews' friend. They met in 1995 at a laundromat where Ms. Becker was employed. During their conversations, Ms. Mathews told Ms. Becker about the four Timmons' rental properties, and Ms. Becker expressed an interest in renting one of them when it became available. Ms. Mathews agreed to tell her the next time one of her parents' houses became available. The Mathews-Becker contacts were limited to the laundromat. They did not socialize or meet at other times and places. Their contacts ceased in 1996 or 1997. Tr. pp. 244, 502-06, 523-24.

15. Following Respondents' rejection of the Wootons, Ms. Mathews contacted Ms. Becker to tell her that the Cooks were leaving and that her house would be available to rent. Because Ms. Becker no longer worked at the laundromat, Ms. Mathews had to search for her. Ms. Mathews did not have her phone number, did not know where she lived, and did not know that she no longer worked at the laundromat. Her search took several days. The manager of the laundromat told Ms. Mathews where Ms. Becker was presently employed. Tr. pp. 511, 523-24, 526-27.

16. The Beckers made their first visit to see the property on April 25th.4 Their visit occurred the day following Ms. Mathews' reestablishment of contact with Tina Becker.5 Prior to their April 25th meeting, Respondents had not met the Beckers. Until April 25th the only contact between the Beckers and Respondents had been through Ms. Mathews. After their first visit on April 25th, the Beckers expressed an interest in renting, but wanted to talk it over. Respondents told them that if they wanted to rent it, they could have it. They visited the property a second time about 10 days later and discussed gas and utility bills with Ms. Cook. On at least one other occasion, Mr. Becker met with Mr. Timmons to negotiate rental terms. As he had agreed with Mr. Wooton, Mr. Timmons agreed to reimburse the Beckers for the costs of materials used to repair the property. Tr. pp. 36-38, 215, 230-32, 269-70, 278-79, 396-97, 483, 529.

17. The Beckers' lease began on August 1, 1998, the day their former apartment lease expired. Although the lease is dated April 24, 2000, it was actually executed at a later date.6 The Timmons received no rent until the August rent payment. The Beckers were reimbursed $2,424.27 for remodeling and repair expenditures and $4,175 for repairing the roof and gutters. J.E. 6.

18. The Timmons have never rented to African-Americans. On several occasions Mr. Timmons observed African-American children playing in Ms. Cook's yard. He never objected to the presence of the children, nor did he otherwise evidence racial animus. Tr. pp. 52-53, 487.

Discussion

Governing Legal Framework

The Charging Party and Intervenors allege that Respondents discriminated against Intervenors because of the race and color of their child in violation of 42 U.S.C. §§ 3604 (a), and (d). These sections of the Act make it unlawful:

> (a) To refuse to. . . rent. . .or to refuse to negotiate for the. . . rental of. . . a dwelling to any person because of race [or] color.
>
> (d) To represent to any person because of race [or] color. . . that any dwelling is not available for inspection. . . or rental when such dwelling is in fact so available.

The Charging Party and Intervenors have the burden of proving, by a preponderance of the evidence, that Respondents discriminated against the Intervenors. The Charging Party and Intervenors may prove discrimination either by direct or indirect evidence.

Absent direct evidence, the Charging Party and Intervenors may prove racial animus by indirect evidence of discriminatory intent by establishing a *prima facie* case. *See HUD v. Blackwell,* 908 F.2d 864, 870 (11th Cir. 1990); *Pinchback v. Armistead Homes, Corp.,* 907 F.2d 1447, 1451-52 (4th Cir.), *cert. denied,* 498 U.S. 983 (1990). The elements of a *prima facie* case are "not fixed," rather, they depend on the circumstances of each case. *Pinchback,* 689 F. Supp. 541, 549 (D. Md. 1988), *aff'd* 907 F.2d 1447; *see also McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802 n.13 (1973). Specifically, in the circumstances of this case, a *prima facie* case of discrimination under 42 U.S.C. § 3604(a) is demonstrated by proof that 1) Intervenors are the parents of a member of a protected class, in this case a member of a racial minority; 2) Intervenors applied for and were qualified to rent the unit involved; 3) Intervenors were rejected by Respondents; and 4) the unit remained available thereafter. Once the Charging Party and Intervenors have established a *prima facie* case, the burden of production shifts to Respondents to articulate a nondiscriminatory reason for their actions. The Charging Party and Intervenors then may prove that the asserted legitimate reason is pretextual.

See McDonnell Douglas Corp., 411 U.S. 792; *see also Texas Dep't of Community Affairs v. Burdine,* 450 U.S. 248 (1981). However, pretext alone does not necessarily prove discrimination. The Charging Party and Intervenors still maintain the burden to demonstrate that an asserted reason, even though pretextual, evidences an intent to discriminate. *See St. Mary's Honor Center v. Hicks,* 509 U.S. 502 (1993).

This case turns on whether the property was previously promised to the Beckers and was, therefore, unavailable for rent on April 19, 1998, the date the Wootons were rejected. I conclude that a preponderance of evidence establishes that the property was available on the day the Wootons were rejected.

I conclude that the record contradicts Respondents' explanation in four respects: First, contrary to his testimony, Mr. Timmons had agreed to rent the property to the Wootons on April 16, 1998; second, Ms. Timmons knew about (and approved) her husband's agreement with the Wootons on or before April 16th, and not April 18th as she claimed; third, the relationship between Ms. Mathews and Ms. Becker does not provide a credible explanation for the rejection of the Wootons; and fourth, Respondents' chronology is erroneous; *i.e.*, they did not begin to negotiate the rental of the property to the Beckers until after they had rejected the Wootons.

1. Mr. Timmons agreed to rent the property to the Wootons.

I credit the Wootons' testimony7 that after the preliminary discussions on Mr. Timmons' porch, Mr. Timmons called Mr. Wooton on the evening of April 16th, told him they could rent the property, and that they arranged to meet on Sunday, April 19th, to sign the lease. I also credit Dawn Cook's testimony that Mr. Timmons told her that the Wootons seemed like nice people and that he was probably going to rent to them. In addition, Mr. Timmons and the Wootons engaged in more than a brief discussion of the lease terms and conditions. The Wootons knew the amounts of both the security deposit and rent, and they wrote a check to cover the security deposit and half of the first month's rent. They purchased the washing machine that the house needed. Mr. Timmons obtained a lease form prior to April 19th in anticipation of the Wootons' visit. After his wife purportedly expressed her disapproval on the evening of April 18th, he made no attempt to contact the Wootons to cancel their visit. Finally, while they were standing on his porch, he never said anything to the Wootons that even suggested that the property may have been rented.

2. Ms. Timmons knew and approved of her husband's promise to lease to the Wootons.

Ms. Wooton called the Timmons residence during the evening of April 16th, and spoke to Ms. Timmons, before speaking to Mr. Timmons to confirm the rental and meeting arrangements. Thus, the Timmons were both aware of a phone call from a

prospective tenant concerning a lease. Unless they had already discussed the lease arrangements, I frankly do not believe that this couple, married for 50 years, could have refrained from discussing the lease and the upcoming visit, *immediately* after this phone call. Ms. Timmons' acquiescence in the lease arrangements is also demonstrated by her failure to cancel the meeting. Respondents' explanation for not contacting the Wootons to cancel their meeting is unconvincing. Respondents testified that they did not contact the Wootons because Ms. Timmons was on the phone with her oldest daughter8 all morning and into the late afternoon of April 19th. However, Ms. Timmons admits that she and her husband left the house and went out to lunch that day. Tr. p. 485. Ms. Timmons' explanation is also inconsistent with her deposition testimony in which she did not mention any lengthy phone call with her daughter, but, rather, stated that she did not call the Wootons because Respondents went out that day.

3. The Mathews-Becker relationship was not a close and continuing friendship.

The evidence establishes that the relationship between Ms. Mathews and Ms. Becker had lapsed one to two years prior to April 1998. The Mathews-Becker friendship does not provide a credible explanation for Respondents to prefer the Beckers over the Wootons, flatly rejecting the Wootons without any assurance that the Beckers would even accept the property. The relationship was not close and did not continue beyond Ms. Mathews' visits to the laundromat. Ms. Mathews did not have Ms. Becker's phone number, nor did she even know that Ms. Becker no longer worked at the laundromat.9

4. Respondents' chronology is false; the lease was backdated.

Respondents did not contact the Beckers, nor did they negotiate the rental of the property to them until after they had rejected the Wootons. Respondents' claim that on April 16, 1998, Mr. Timmons did not agree to rent to the Wootons. Rather, they assert that he told them that the property had been spoken for, and that he viewed the Wootons merely as an "insurance policy." That claim is belied by Mr. Wooton's credible testimony that Mr. Timmons told him on April 16 that his daughter had not contacted her friend about the house and that he specifically told her not to contact her friend. (*See* Finding of Fact No. 7). Ms. Matthews' and Ms. Becker's attempt to contradict Mr. Wooton's version of the facts is also not credible. They claim that their first contact about the property was on April 14, 15, or 16; and Ms. Becker claims that she and her husband visited the property one day after Ms. Mathews found her and told her that the property was available. Tr. p. 216. If their testimony is correct, then the Beckers would had to have first seen the property on April 15, 16, or 17. However, according to Ms. Timmons, the Becker's first visit to the property was "definitely after" April 19. Finally, Ms. Cook credibly testified that the Becker's first visit to the property occurred on Saturday, April 25, one week before her son's May 3rd communion, a date she was likely to remember.10

Because the Beckers first visited the property on April 25, they could not have executed a lease on April 24, the day before. Moreover, the Beckers testified that after their initial visit to the property, they returned several times to negotiate terms relating to repairs and upgrades to the property. Mr. Timmons made inconsistent statements regarding the date the lease was executed. He told Ms. Wooton when she called him on April 26th that the lease had not been signed. In response to an interrogatory, he acknowledged that the property was still available on July 1. He told the HUD investigator that the lease was signed on August 1.11

In summary, credible testimony and circumstantial evidence establish that on April 16th, Respondents had both agreed to rent to the Wootons. The lease was to have been signed on April 19th. Once they learned that the Wootons had an African-American child, they rejected them and had their daughter contact the Beckers who made their first visit to the property on April 25th. Sometime later they entered into a lease which they backdated to April 24th. Thus, Respondents' explanation is a pretext designed to cover up their real reason for rejecting the Wootons. I further conclude that this false explanation establishes Respondents' intent to discriminate against the Wootons because of the race and color of their child.

Damages

The Wootons

Mr. Wooton is a self-employed, 18-wheel dump truck driver, earning between $500-$600 per day. He took two and one-half days off to look at alternative rental and sale properties. He lost four and one-half days of work time meeting with SSHC staff, the HUD investigator, and appearing at depositions in connection with this proceeding. Accordingly, he will be compensated $3,850 for lost time. (7 days x $550 per day = $3850). Tr. pp. 59, 76-77, 84-85.

The Wootons purchased a town home in Bollingbrook, Illinois, putting five percent down, and financing the remainder. They moved into the home in the fall of 1998. Instead of the $700 per month to rent Respondents' property, the Wooton's monthly house payment was $1,182. The monthly payment was more than they could afford; consequently, they fell behind, and the house is going into foreclosure. The Charging Party and Intervenors seek $10,122 in damages (the difference between the $700 rent and their mortgage payment of $1,182 over 21 months). I decline to award the claimed damages because Intervenors have failed to mitigate their damages. *See Tyus v. Urban Search Management*, 102 F.3d 256, 264 (7th Cir.), *cert. denied*,520 U.S. 1251 (1997); *Young v. Parkland Village, Inc.*, 460 F. Supp. 67, 71 (D. Md. 1978). The Charging Party and Intervenor have failed to demonstrate that the Wootons could not

have obtained a comparable rental. Rather, the evidence reflects that they were not compelled to purchase their house but chose to do so, rather than rent. Tr. pp. 85-86.

The Wootons offered compelling evidence of emotional injury directly resulting from their rejection by the Timmons. Their emotional distress falls into two categories: first, the Wootons' vicarious distress caused by dealing with Joshua's reaction to his parents' failure to obtain housing; and second, the stress occasioned by their search for housing.

Joshua questioned his parents about whether he was the reason they didn't get the house. They repeatedly told him that it was not his fault. Nevertheless, for the first time, Joshua began getting into trouble at school. He believed that black people turn white when they are burned. He wanted to be white. He went so far as to start a fire in the bathroom in order to turn himself white. To deal with the problem, his parents sent Joshua to a six to eight week class at the local fire department. There he was taught about the seriousness and danger of fires. Ms. Wooton lost sleep and dreamed about the rejection; she now even questions whether she should have adopted Joshua. She blames herself for putting him into this situation and asks herself whether Joshua would have been better off having been adopted by an African-American family. She stated:

> To know that my son, who I didn't, I chose him because he was new at birth. Not because of what he was. To make me wonder why I'd done it. What have I done to deserve this? How can somebody treat a child like this. If it was an adult, they could take it up between each other. But an innocent child cannot take it upon himself to fight for himself.
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> * * *
>
> Why is he black? He tried to turn himself white. It's really hard to explain to an eight-year old, at that time he was six, look in the mirror. Look at yourself. You are special. You're still one of us, no matter what you are.

Tr. pp. 165-66.

> [O]ur concern is that he's going to wonder for the rest of his life why he's where he is. Why did we adopt him? Why isn't he with his own kind of people.

Tr. p. 170.

Mr. Wooton has also suffered. He stayed up nights comforting his wife. He questions his adequacy as a father and provider. He and his wife have had many arguments as a result of what happened to them. Tr. pp. 72-74, 85-86, 164, 167-68.

The Wootons were inconvenienced by the necessity of continuing their search for acceptable housing for their family, and they were embarrassed by having to cancel their purchase of the washing machine. Indeed, Ms. Wooton's brother wrote them after the incident complaining that he had rejected another buyer in order to accommodate them. C.P. Ex. 2.

In consideration of the emotional distress and inconvenience suffered by the Wootons, I award $50,000 to Darlene Wooton and $10,000 to Ronald Wooton.

South Suburban Housing Center

A fair housing organization may recover damages for out-of-pocket costs incurred in the investigation and processing of a housing discrimination complaint. *See, e.g., Chicago v. Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d 1086 (7th Cir. 1992), *cert. denied*, 508 U.S. 972 (1993); *Davis v. Mansards*, 597 F. Supp. 334 (N.D. Ind. 1984). An award of damages must be specifically proved and based on evidence. *See, e.g., Wood v. Day*, 859 F.2d 1490, 1492-93 (D.C. Cir. 1988); *Bills v. Hodges*, 628 F.2d 844 (4th Cir. 1980). After their rejection, the Wootons sought assistance from the SSHC. The SSHC's Compliance Coordinator and the Executive Director developed a scenario, including a script, for testing for racial discrimination and a tester was contacted to conduct the test. However, after at least five attempts, testers were unable to conduct the tests. The Wootons filed a Complaint with the Department of Housing and Urban Development (HUD) on May 27, 1998. On September 1, 1998, SSHC filed its own complaint against the Timmons with HUD. J.E. 9; Tr. pp. 299-300. SSHC expended $5,250 in attorney fees, $825 for the time spent by the Executive Director, $1,000 for the preparation of the failed tests, indirect costs (overhead) calculated as a percentage (*i.e.* 18.2%) of direct costs, and $750 in outside legal costs. In addition, SSHC anticipates $2,000 for the costs of training and future monitoring of Respondents. I do not award attorney fees. These can be awarded to a prevailing party, but only after the decision becomes final. *See* 24 C.F.R. § 180.705. Accordingly, South Suburban Housing Center is awarded $3,825 ($825 + $1,000 + $2,000) for its expenses and the future costs of training and monitoring and $696.15 ($3,825 x .182) for indirect costs, for a total damages award of $4,521.15 ($3,825 + $696.15).

A fair housing organization may, in appropriate circumstances, recover damages for frustration of purpose/diversion of resources. *See Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d at 1099; *HUD v. Properties Unlimited*, 2A Fair Housing-Fair Lending (Aspen) ¶25,009, 25,149-50 (HUDALJ Aug. 5, 1991). I decline to award damages for frustration of purpose/diversion of resources because there is a lack of evidence relating to the extent to which resources were actually diverted and SSHC's

purposes were actually thwarted sufficient to support a separate award for these alleged damages. *See* Tr. pp. 315-16.

Civil Money Penalty

To vindicate the public interest and deter future violations of law, the Act authorizes an administrative law judge to impose civil penalties upon respondents who violate the Act. 42 U.S.C. § 3612(g)(3); *see also* 24 C.F.R. § 180.671. In a proceeding involving two or more respondents who violate the Act, separate civil penalties may be assessed against each respondent. 24 C.F.R. § 180.671(e). Where, as here, Respondents have not been adjudged to have committed any prior discriminatory housing practice, a maximum penalty of $11,000.00 per Respondent may be assessed. 42 U.S.C. § 3612(g)(3)(A); *see also* 24 C.F.R. § 180.671(a)(1). Furthermore, a civil penalty may be assessed for each separate and distinct discriminatory housing practice that a respondent commits. 24 C.F.R. § 180.671(a).

Determining an appropriate civil penalty requires consideration of various factors such as the "nature and circumstances of the violation, the degree of culpability, any history of prior violations, the financial circumstances of the Respondent, the goal of deterrence, and other matters as justice may require." *HUD v. Schmid*, 2A Fair Housing-Fair Lending (Aspen) ¶ 25,139, 26,153 (HUDALJ July 15, 1999) (quoting H.R. Rep. No. 711, 100th Congr. 2d Sess. at 37 (1988)); *HUD v. Johnson*, 2A Fair Housing-Fair Lending (Aspen) ¶25,076, 25,711 (HUDALJ Jul. 26, 1994); *see also* 24 C.F.R. § 180.671(c).

Nature and Circumstances of the Violation and Degree of Culpability

The nature and circumstances of the violation warrant a significant civil penalty. Respondents chose to reject perfectly well qualified renters for the sole reason that these renters had a black child. Following a 10 to 15 minute discussion out of the Wootons' presence, their rejection took place in front of the child. Joshua was old enough and astute enough to understand that it was his skin color - something he had no control over - that was the problem. Respondents' decision to reject the Wootons was their decision, and theirs alone. No one forced them to do this; it was not the act of a wayward agent.

Financial Circumstances

Respondents have neither claimed nor produced any evidence that they are unable to pay a civil money penalty. Respondents' financial circumstances, therefore, are not a factor in determining the civil money penalty to be assessed in this case.

Deterrence

Respondents own and manage four rental properties. Accordingly, they must be deterred from engaging in future illegal conduct. Imposition of a civil money penalty will send a message to others that racial discrimination will not be tolerated. Considering the size of Respondents' real estate holdings and weighing the factors discussed above, I find that a $5,000 civil penalty against each Respondent, for total penalties of $10,000, is appropriate.

Injunctive Relief

Once a violation of the Fair Housing Act has been established, injunctive or other equitable relief may be ordered to remove the lingering effects of prior discrimination and to insure that a respondent does not violate the Act in the future. *HUD v. Johnson*, 2 Fair Housing-Fair Lending (Aspen) ¶25,076, 25,711 (HUDALJ Jul. 26, 1994); 42 U.S.C. § 3612(g)(3). The provisions of the Order set forth below meet the objectives of the Act.

Conclusion

The preponderance of evidence establishes that Respondents Cecil D. Timmons and Patricia Timmons discriminated against Intervenors Ronald Wooton and Darlene Wooton on the basis of race and color in violation of 42 U.S.C. §§ 3604 (a) and (d); and 24 C.F.R. §§ 100.60(b)(1) and 100.80(b)(1). Intervenors and Complainant suffered actual damages for which they will receive compensatory awards. Further, to vindicate the public interest, injunctive relief will be ordered, as well as civil penalties against Respondents.

ORDER

It is hereby ORDERED that:

1. Respondents Cecil and Patricia Timmons are permanently enjoined from discriminating with respect to housing because of race or color.

2. Within forty-five (45) days of the date this Order becomes final, and for no less than five (5) years following this date, Respondents shall display the HUD Fair Housing logo alongside any "for rent" signs that might be posted in connection with any dwellings Respondents own.

3. Within forty-five (45) days of the date this Order becomes final, or as soon

thereafter as South Suburban Housing Center (SSHC) and Respondents can arrange, Respondents shall attend SSHC fair housing training.

4. Within forty-five (45) days of the date this Order becomes final, Respondents shall pay damages in the amount of $4,521.15 to Complainant South Suburban Housing Center.

5. Within forty-five (45) days of the date this Order becomes final, Respondents shall pay damages in the amount of $13,850 to Intervenor Ronald Wooton.

6. Within forty-five (45) days of the date this Order becomes final, Respondents shall pay damages in the amount of $50,000 to Intervenor Darlene Wooton.

7. Within forty-five (45) days of the date this Order becomes final, Respondent Cecil Timmons shall pay a civil penalty of $5,000 to the Secretary of HUD.

8. Within forty-five (45) days of the date this Order becomes final, Respondent Patricia Timmons shall pay a civil penalty of $5,000 to the Secretary of HUD.

This Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. §§ 180.670 and 180.680(b), and will become the final agency decision thirty (30) days after the date of issuance of this initial decision.

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WILLIAM C. CREGAR
Administrative Law Judge

Dated: November 16, 2000

CERTIFICATE OF SERVICE

I hereby certify that copies of this ORDER issued by WILLIAM C. CREGAR, Administrative Law Judge, in HUDALJ 05-98-1000-8 and 05-98-1476-8 were sent to the following parties on this 16th day of November, 2000, in the manner indicated:

_____
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